

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 93-0383
CONTROLLED SUBSTANCE EXCISE TAX

For Tax Period: April 12, 1993

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Issue

Controlled Substance Excise Tax – Imposition

Authority: IC 6-7-3-5; IC 6-7-3-6(b), IC 6-8.1-5-1(b), *Bryant v. State of Indiana*, 660 N.E.2d 290 (Ind. 1995)

Taxpayer protests the imposition of the Controlled Substance Excise Tax.

Statement of Facts

Following a search conducted pursuant to a search warrant in which approximately 100 marijuana plants and a number of bags containing marijuana were found, Taxpayer was arrested in April 1993 by officers from the Lawrence County Sheriff's Department and charged with two counts of possession of marijuana (Class D Felony) and one count of maintaining a common nuisance (Class D Felony). The Department assessed the Controlled Substance Excise Tax on April 12, 1993 after the field test showed a positive test for marijuana. The assessment was based on 1,936.2 grams of marijuana, a Schedule I drug. In August 1993, as part of a plea agreement, Taxpayer pled guilty to one count of possession of marijuana (IC 35-48-4-11) and was sentenced in October 1993. Taxpayer protests this assessment, and a hearing was held. Further facts will be provided as necessary.

Discussion

IC 6-7-3-5 states:

“The controlled substance excise tax is imposed on controlled substances that are: (1) delivered; (2) possessed; or (3) manufactured in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852...”

IC 6-8.1-5-1(b) states:

“...The notice of proposed assessment is prima facie evidence that the department’s claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.”

Taxpayer first argues that the assessment of the Controlled Substance Excise Tax is excessive. At the time of the Taxpayer’s arrest and the Department’s issuance of the jeopardy assessment, IC 6-7-3-6(b) levied the Controlled Substance Excise Tax at a rate of forty dollars (\$40) per gram for a Schedule I drug, of which marijuana falls into that category. The Taxpayer was taxed at the statutory rate, no more. The Controlled Substance Excise Tax has not been excessively assessed to the Taxpayer.

Taxpayer next argues that the imposition of the Controlled Substance Excise Tax constitutes double jeopardy because the Taxpayer has already pled guilty to a charge of possession of marijuana as a result of the search conducted on his residence. As the Indiana Supreme Court held in *Bryant v. State of Indiana*, the imposition of the Controlled Substance Excise Tax is a jeopardy for double jeopardy purposes. *Bryant*, 660 N.E.2d at 297. In this case jeopardy attached on April 12, 1993 when the Department issued a jeopardy assessment against the Taxpayer for the Controlled Substance Excise Tax. Taxpayer did not plead guilty to the criminal charge of possession of marijuana under IC 35-48-4-11 until August 16, 1993 and was subsequently sentenced on October 13, 1993. The assessment of the Controlled Substance Excise Tax was the first jeopardy to attach. Thus, the imposition of the Controlled Substance Excise Tax does not constitute double jeopardy for the Taxpayer in this instance.

The Fourth Circuit United States Court of Appeals case of *Lynn v. West*, 134 F.3d 582 (4th Cir. 1998) is cited by the Taxpayer as his final argument. The *Lynn* Court did hold that North Carolina’s drug tax was a criminal penalty as opposed to a civil tax, and, as such, the enforcement of the tax had to conform to all the constitutional safeguards that

accompany criminal proceedings. *Lynn*, 134 F.3d at 589. *Lynn*, however, is not binding on the Department or courts in the State of Indiana.

Finding

The taxpayer's protest is denied.

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